



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R03-OAR-2013-0636; FRL-9920-51-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Revision to Allegheny County Rules; Preconstruction Permit Requirements - Nonattainment New Source Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to grant full approval for the revisions to the Commonwealth of Pennsylvania State Implementation Plan (SIP) submitted on June 25, 2012 by the Pennsylvania Department of Environmental Protection (PADEP) on behalf of the Allegheny County Health Department (ACHD). These revisions pertain to ACHD's Nonattainment New Source Review (NNSR) program, and implement an incorporation by reference (IBR) of Pennsylvania's NNSR provisions. They also correct a citation error in ACHD's NNSR regulations. This action is in accordance with the requirements of the Clean Air Act (CAA).

DATES: Written comments must be received on or before [insert date 30 days from date of publication].

ADDRESSES: Submit your comments, identified by Docket ID Number **EPA-R03-OAR-2013-0636** by one of the following methods:

A. www.regulations.gov. Follow the on-line instructions for submitting comments.

B. E-mail: kreider.andrew@epa.gov.

C. Mail: EPA-R03-OAR-2013-0636, Mr. Andrew Kreider, Associate Director, Office of Permits and Air Toxics, Mailcode 3AP10, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. **EPA-R03-OAR-2013-0636**. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index.

Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available from the Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105; and Allegheny County Health Department, Bureau of Environmental Quality, Division of Air Quality, 301 39th Street, Pittsburgh, Pennsylvania 15201.

FOR FURTHER INFORMATION CONTACT: Mr. Paul T. Wentworth, (215) 814-2183, or by e-mail at wentworth.paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On June 25, 2012, PADEP submitted a formal revision to its State Implementation Plan (SIP) (the June 2012 SIP submittal) which revises ACHD's NNSR program. By letter dated June 27, 2014, PADEP modified the June 2012 SIP revision, by withdrawing specific language from the June 2012 SIP submittal. The withdrawn language related to a proposed process for automatically incorporating additions, revisions, or deletions to PADEP's NNSR regulations into ACHD's SIP effective on the date of such PADEP NNSR regulation revision. As a result of PADEP's June 27, 2014 letter, the language withdrawn by PADEP from the June 25, 2012 SIP submission is not being considered as part of this rulemaking action. The remainder of the SIP

revision is the subject of this rulemaking action and consists of amendments to ACHD's major NNSR permitting regulations under Article XXI of ACHD's Rules and Regulations. The June 2012 SIP submittal includes amendments to the following sections of ACHD's Rules and Regulations, Article XXI: section 2102.20 (Definitions); 2102.04 (Installation permits); section 2102.06 (Major sources Locating in or Impacting a Nonattainment Area); and, section 2102.08 (Emissions Offset Registration). As discussed in greater detail in this proposal, the June 2012 SIP submittal includes revisions to ACHD's nonattainment NSR program which are consistent with currently promulgated federal NSR regulations and with NSR regulations which EPA has previously approved into Pennsylvania's SIP.

Generally, the June 2012 SIP revision incorporates provisions related to two Federal rulemaking actions: a) the 2002 "Prevention of Significant Deterioration (PSD) and Nonattainment NSR (NSR): Baseline Emissions Determination, Actual-to-Future-Actual Methodology, Plantwide Applicability Limitations, Clean Units, Pollution Control Projects" (2002 NSR Reform Rules), see 67 FR 80186, December 31, 2002, and b) the 2008 "Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM_{2.5})" (2008 NSR PM_{2.5} Rule), see 73 FR 28321, May 16, 2008.

The 2002 NSR Reform Rules made changes to five areas of the NSR programs. In summary, these rules: (1) provided a new method for determining baseline actual emissions; (2) adopted an actual-to-projected-actual methodology for determining whether a major modification has occurred; (3) allowed major stationary sources to comply with a Plantwide Applicability Limit (PAL) to avoid having a significant emissions increase that triggers the requirements of the major NSR program; (4) provided a new applicability provision for emissions units that are

designated clean units; and, (5) excluded pollution control projects (PCPs) from the definition of “physical change or change in the method of operation.” On November 7, 2003, EPA published a notice of final action on its reconsideration of the 2002 NSR Reform Rules¹, which added a definition for “replacement unit” and clarified an issue regarding PALs. For additional information on the 2002 NSR Reform Rules, see: a) EPA’s December 31, 2002 final rulemaking action entitled: “Prevention of Significant Deterioration (PSD) and Nonattainment NSR (NSR): Baseline Emissions Determination, Actual-to-Future-Actual Methodology, Plantwide Applicability Limitations, Clean Units, Pollution Control Projects” (67 FR 80186), b) the 2003 final reconsideration: “Prevention of Significant Deterioration (PSD) and Non-Attainment New Source Review (NSR): Reconsideration” (68 FR 63021), and c) the following website: <http://www.epa.gov/nsr>.

After the 2002 NSR Reform Rules were finalized and effective (March 3, 2003), industry, state, and environmental petitioners challenged numerous aspects of the 2002 NSR Reform Rules, along with portions of EPA's 1980 NSR Rules (45 FR 52676, August 7, 1980). On June 24, 2005, the United States Court of Appeals for the District of Columbia (D.C. Circuit) issued a decision on the challenges to the 2002 NSR Reform Rules. *New York v. United States*, 413 F.3d 3 (*New York I*).

In summary, the D.C. Circuit vacated portions of the rules pertaining to clean units and PCPs, remanded a portion of the rules regarding recordkeeping and the term “reasonable possibility” found in 40 CFR 52.21(r)(6) and 40 CFR 51.166(r)(6), and either upheld or did not comment on

¹ See, “Prevention of Significant Deterioration (PSD) and Non-Attainment New Source Review (NSR): Reconsideration;” (68 FR 63021).

the other provisions included as part of the 2002 NSR Reform Rules. On June 13, 2007 (72 FR 32526), EPA took final action to revise the 2002 NSR Reform Rules to remove from federal law all provisions pertaining to clean units and the PCP exemption that were vacated by the D.C. Circuit.

The 2008 NSR PM_{2.5} Rule (as well as the 2007 “Final Clean Air Fine Particle Implementation Rule” (2007 PM_{2.5} Implementation Rule)²), was also the subject of litigation before the D.C. Circuit in *Natural Resources Defense Council v. EPA* (D.C. Circuit Court decision).³ On January 4, 2013, the court remanded to EPA both the 2007 PM_{2.5} Implementation Rule and the 2008 NSR PM_{2.5} Rule. The court found that in both rules EPA erred in implementing the 1997 PM_{2.5} NAAQS solely pursuant to the general implementation provisions of subpart 1 of part D of title I of the CAA (subpart 1), rather than pursuant to the additional implementation provisions specific to particulate matter in subpart 4 of part D of title I (subpart 4).⁴ As a result, the court remanded both rules and instructed EPA “to re-promulgate these rules pursuant to subpart 4 consistent with this opinion.” Although the D.C. Circuit declined to establish a deadline for EPA’s response, EPA intends to respond promptly to the court’s remand and to promulgate new generally applicable implementation regulations for the PM_{2.5} NAAQS in accordance with the requirements of subpart 4. In the interim, however, states and EPA still need to proceed with implementation of the 1997 PM_{2.5} NAAQS in a timely and effective fashion in order to meet

² 72 FR 20586 (April 25, 2007)

³ 706 F.3d 428 (D.C. Cir. 2013)

⁴ The court’s opinion did not specifically address the point that implementation under subpart 4 requirements would still require consideration of subpart 1 requirements, to the extent that subpart 4 did not override subpart 1. EPA assumes that the court presumed that EPA would address this issue of potential overlap between subpart 1 and subpart 4 requirements in subsequent actions.

statutory obligations under the CAA and to assure the protection of public health intended by those NAAQS.

As part of its response to the January 4, 2013 D.C. Circuit Court of Appeals Order, EPA issued a final rulemaking entitled “Identification of Nonattainment Classification and Deadlines for Submission of State Implementation Plan (SIP) Provisions for the 1997 Fine Particle (PM_{2.5}) National Ambient Air Quality Standard (NAAQS) and 2006 PM_{2.5} NAAQS; Final Rule,” (79 FR 31566, June 2, 2014). See <http://www.epa.gov/airquality/particlepollution/actions.html>. This rule classified all existing PM_{2.5} nonattainment areas as "Moderate" nonattainment areas and set a deadline of December 31, 2014, for states to submit any SIP submissions, including nonattainment NSR SIPs that may be necessary to satisfy the requirements of subpart 4 with respect to PM_{2.5} nonattainment areas. The existing PM_{2.5} nonattainment areas addressed by this rule included the Liberty-Clairton and Pittsburgh nonattainment areas, portions of which are regulated by ACHD and, therefore, subject to the regulatory revisions being proposed for approval in this action. See 79 FR 31566 (June 2, 2014). EPA is continuing to evaluate the requirements of subpart 4 as they pertain to, among other things, nonattainment NSR for PM_{2.5} emissions.

Additionally, the 2008 NSR PM_{2.5} Rule authorized states to adopt provisions in their nonattainment NSR rules that would allow major stationary sources locating in areas designated nonattainment for PM_{2.5}, and major modifications at stationary sources located in areas designated nonattainment for PM_{2.5}, to offset emissions increases of direct PM_{2.5} emissions or PM_{2.5} precursors with reductions of either direct PM_{2.5} emissions or PM_{2.5} precursors in accordance with offset ratios contained in the approved SIP for the applicable nonattainment

area. The inclusion, in whole or in part, of the interpollutant offset provisions for PM_{2.5} is discretionary on the part of the states. In the preamble to the 2008 NSR PM_{2.5} Rule, EPA included preferred or presumptive offset ratios, applicable to specific PM_{2.5} precursors that a state may adopt in conjunction with the new interpollutant offset provisions for PM_{2.5}, and for which a state could rely on the EPA's technical work to demonstrate the adequacy of the ratios for use in any PM_{2.5} nonattainment area. Alternatively, the preamble indicated that states may adopt their own ratios, subject to the EPA's approval, that would have to be substantiated by modeling or other technical demonstrations of the net air quality benefit for ambient PM_{2.5} concentrations. The preferred ratios were subsequently the subject of a petition for reconsideration, which the Administrator granted. EPA continues to support the basic policy that sources may offset increases in emissions of direct PM_{2.5} or of any PM_{2.5} precursor in a PM_{2.5} nonattainment area with actual emissions reductions in direct PM_{2.5} or PM_{2.5} precursors in accordance with offset ratios as approved in the SIP for the applicable nonattainment area. However, EPA no longer considers the preferred ratios set forth in the preamble to the 2008 PM_{2.5} NSR Rule for PM_{2.5} NSR implementation to be presumptively approvable. Instead, any ratio involving PM_{2.5} precursors adopted by the state for use in the interpollutant offset program for PM_{2.5} nonattainment areas must be accompanied by a technical demonstration that shows the net air quality benefits of such ratio for the PM_{2.5} nonattainment area in which it will be applied.

A Technical Support Document (TSD) is included in the docket for this action, and contains additional detail regarding the history and background of the Federal counterparts to the regulations included in the June 2012 SIP submittal, which will not be restated here.

II. Summary of SIP Revision

The proposed SIP revisions include amendments to ACHD's Rules and Regulations, Article XXI sections: 2102.20 (Definitions), 2102.04 (Installation permits), 2102.06 (Major sources Locating in or Impacting a Nonattainment Area), and 2102.08 (Emissions Offset Registration). The revisions in the June 2012 SIP submittal create a revised NNSR program in Allegheny County which, through amendment and incorporation by reference, reflects all the changes to Pennsylvania's NNSR Program from the revisions to Pennsylvania's SIP approved on May 14, 2012 (NSR reform rules) and on August 13, 2012 (2008 NSR PM_{2.5} rule).

III. Analysis

A. NSR Reform

EPA last took action to approve ACHD's NNSR program into the Pennsylvania SIP on November 14, 2002 (see 67 FR 68935). At that time, a portion of ACHD's approved NNSR program directly relied upon an incorporation by reference of the requirements then codified at 25 PA Code 127.211. In 2007, Pennsylvania revised its NNSR regulations and these revised NNSR regulations were approved into the Pennsylvania SIP on May 14, 2012 (77 FR 28261). These changes added the NSR reform elements into Pennsylvania's NNSR program. However, those changes also deleted section 127.211, and re-codified those requirements elsewhere. That action created a deficiency in ACHD's NNSR provisions, because they relied on the incorporation by reference of a regulatory citation that no longer existed. The June 2012 SIP submittal has incorporated by reference Pennsylvania's NNSR program provisions which are set forth at 25 PA Code Chapter 127 as approved by EPA, including the correct citation at 25 PA Code 127.203a. Because EPA has already approved Pennsylvania's revised NNSR regulations

(see 77 FR 28261), there is no need to re-evaluate these same NSR Reform elements which are set forth, or incorporated by reference, in the June 2012 SIP submittal.

EPA has determined that the June 2012 SIP submittal has incorporated all of PADEP's NNSR construction, modification, reactivation, and operating permit program provisions at 25 PA Code section 121.1 and 25 PA Code Chapter 127 (PADEP's NNSR program) and is proposing to approve this submittal as meeting the Federal NNSR requirements.

B. Implementation of NSR Requirements for PM_{2.5}

On July 13, 2012, EPA took final action to approve the provisions promulgated in the 2008 NSR PM_{2.5} Rule into the Pennsylvania SIP. See 77 FR 41276. By virtue of the incorporation by reference of Pennsylvania's NNSR regulations, Pennsylvania's June 2012 SIP submittal includes revisions to ACHD's nonattainment NSR program consistent with the provisions promulgated in the 2008 NSR PM_{2.5} Rule and already approved into Pennsylvania's SIP.

EPA is in the process of evaluating the requirements of subpart 4 as they pertain to nonattainment NSR. In particular, subpart 4 includes section 189(e) of the CAA, which requires the control of major stationary sources of PM₁₀ precursors (and hence under the D.C. Circuit court decision, PM_{2.5} precursors) "except where the Administrator determines that such sources do not contribute significantly to PM₁₀ levels which exceed the standard in the area." The evaluation of which precursors need to be controlled to achieve the standard in a particular area is typically conducted in the context of the state's preparing and the EPA's reviewing of an area's attainment plan SIP.

While ACHD's submittal may not yet contain all of the elements necessary to satisfy the CAA requirements when evaluated under subpart 4, the proposed revisions represent a considerable

strengthening of the currently approved Pennsylvania SIP, which does not currently address PM_{2.5} for Allegheny County. Therefore, EPA is granting full approval to the nonattainment NSR provisions in ACHD's June 2012 SIP.

For the reasons previously discussed, EPA is not evaluating at this time whether ACHD's submittal will require additional revisions to satisfy the subpart 4 requirements. As discussed in section I (Background), by separate rulemaking action, EPA has identified the classification under subpart 4 of areas currently designated nonattainment for the 1997 and 2006 PM_{2.5} NAAQS as "Moderate." These areas include the Liberty-Clairton and Pittsburgh nonattainment areas, portions of which are regulated by ACHD and, therefore, are subject to the regulatory revisions being proposed for approval in this action. That rulemaking also established a December 31, 2014 deadline for the submission of any additional attainment related SIP elements that may be needed to meet the applicable requirements of subpart 4. Therefore, those requirements are not yet due. EPA believes that it is appropriate for the EPA to take into consideration the timing and sequence of related SIP submissions as part of determining what it is reasonable to expect a State to have addressed in a SIP for a NAAQS at the time when the EPA acts on such submission. Such an approach is reasonable, and to adopt a different approach by which the EPA could not approve a SIP, whenever there was any impending or future revision to the SIP that will be required by another collateral rulemaking action would result in regulatory gridlock. The EPA believes that such an outcome would be an unreasonable reading of the statutory process for the SIP's contemplated in section 110(a) (1) and (2).

IV. Proposed Action

EPA is proposing full approval of the June 2012 SIP submittal, which creates a revised NNSR program in Allegheny County.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, which concerns a revised NNSR program in Allegheny County, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: November 21, 2014

Shawn M. Garvin,
Regional Administrator,
Region III

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